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**Date:** Sunday, January 9, 2022 at 9:49 PM  
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**Subject:** Ohio Jury Instructions

Director Bavitz,

I am in receipt of your letter of December 21, 2021, as Counsel for Public Resource.Org. which was directed to Judge Campbell as Chair of the Ohio Judicial Conference. I do appreciate your creativity in attempting to expand the application of Georgia v. [Public.Resource.Org](http://Public.Resource.Org), Inc to justify your client's illegal poaching and subsequently republishing "Ohio Jury Instructions". I have passed along your letter to recently retired Judge Patrick Carroll, Co-Chair of the Jury Instruction Committee for consideration by the committee at their January meeting later this month.

If you wish you can consider this email a Cease and Desist demand. I expect a more formal notice to be forthcoming after the Jury Instruction Committee meets. To be taken seriously one would not expect so many factual errors compounded by self-serving puffery regarding the high minded purposes of your client's copyright infringements.

For starters, "Ohio Jury Instructions" are not freely available to every registered Ohio attorney, nor are they freely available to the Ohio Judiciary. As I recall the members of the Jury Instruction Committee are each provided complimentary copies by the publisher and that is it. Everyone else pays, either through paying for Ohio State Bar Association membership, which is not mandatory for Ohio attorneys, or by subscription through one of the publishers.

As your limited research has revealed there is no state action mandating the use of "Ohio Jury Instructions". When jury instructions are part of the basis for an appeal it is indeed rare that an appellate court discusses a deviation from "Ohio Jury Instructions", rather the appellate opinions focus on whether the jury charge correctly reflected relevant law that should be applied to the facts of a given case. Every Ohio trial judge is free to craft their own jury instructions in each case being submitted to a jury. During my twenty-four years on the Ohio Supreme Court I do not recall a single opinion where the trial judge was criticized for not properly following the text of "Ohio Jury Instructions" that were available at the time of trial.

Unlike all other committees listed under the umbrella of the Ohio Judicial Conference, the Ohio Jury Instruction Committee self-selects its membership which does include a number of distinguished judges, both active and retired. However, the committee

membership, again by committee invitation, includes law professors and practicing attorneys. The committee meets on Friday evening and Saturday ten times each year. The judges serve without compensation but the attorneys and law faculty have contractual compensation tied to hours worked. No state funds are committed to the operation of the committee. The hotel, food and compensation expenses for the committee are paid from a Rotary Fund managed by the Judicial Conference and subject to state audit, however that fund's revenue is exclusively not state funds including the revenue resulting from the publication of "Ohio Jury Instructions".

Unlike the process followed in developing the Georgia Annotated Code, the publishers of "Ohio Jury Instructions" have no involvement in its development. The committee, often after months of deliberation, decides when to release new or amended jury instructions to the publishers. Formatting is the only input from the publisher after the release of the text by the committee. No officer or staff member of the Ohio Judicial Conference is consulted for approval prior to release of instructions. One should never speculate on the outcome of future litigation but I believe one could reasonably conclude that the holding in *Georgia v. Public.Resource.Org.Inc* is not much of a fig leaf to cover your client's exposure from impermissibly copying and republishing "Ohio Jury Instructions".

My initial instinct is that there is a very limited audience for free access to outdated "Ohio Jury Instructions" and it is certainly not some poor blind pro se litigant in a civil case. Ohio Judges freely share their proposed jury instructions with the attorneys and pro se litigants prior to closing arguments and are certainly willing to tender the sources for their draft instructions when disputes arise.

Paul E. Pfeifer, Executive Director, Ohio Judicial Conference

## **Paul Pfeifer**

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